

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 TROY EMANUEL, JR.,

4 Plaintiff

5 v.

6 COOKE, et al.,

7 Defendants

Case No.: 3:23-cv-00564-MMD-CSD

**Report & Recommendation of
United States Magistrate Judge**

Re: ECF No.49

8 This Report and Recommendation is made to the Honorable Miranda M. Du, Chief
9 United States District Judge. The action was referred to the undersigned Magistrate Judge
10 pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

11 Before the court is Plaintiff's motion for summary judgment. (ECF No. 49.)

12 Plaintiff is an inmate in custody of the Nevada Department of Corrections (NDOC). He
13 filed a pro se civil rights complaint pursuant to 42 U.S.C. § 1983, which the court screened on
14 November 21, 2023. The court allowed Plaintiff to proceed with the following claims: (1) a
15 retaliation claim against Brown and Gamberg; (2) an Eighth Amendment failure to protect claim
16 against Cooke, Drummond and Gittere; and (3) an Eighth Amendment excessive force claim
17 against Milke and Pickens. (ECF No. 4.)

18 Plaintiff was appointed counsel from the Federal Public Defender's Office (FPD);
19 however, he subsequently advised that he no longer wanted the FPD's Office to represent him.
20 The court held a hearing and the FPD's Office is now withdrawn from the case. (ECF No. 47.)
21 Plaintiff was given until September 5, 2024, to find alternative counsel or proceed with
22 representing himself. (*Id.*) No notice of appearance was filed, and at a status conference on
23 September 20, 2024, Plaintiff confirmed that he will be representing himself in this case.

1 The Attorney General's Office filed a notice of acceptance of service for Defendants on
2 July 24, 2024, making their answer or other responsive pleading due by September 23, 2024.
3 (ECF Nos. 34, 45.) On September 17, 2024, Plaintiff filed a motion for summary judgment.
4 (ECF No. 49.)

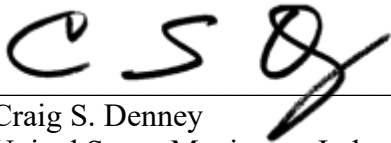
5 IT IS HEREBY RECOMMENDED that the District Judge enter an order **DENYING**
6 Plaintiff's motion for summary judgment (ECF No. 49) **WITHOUT PREJUDICE** as premature
7 as Defendants have not yet filed an answer and the court has not entered a discovery plan and
8 scheduling order or permitted discovery to take place. Once Defendants file their answer or other
9 responsive pleading, the court generally will require the filing of a case management report by
10 the parties and will hold a case management conference and then enter a scheduling order setting
11 deadlines for, among other things, the completion of discovery and the filing of dispositive
12 motions. Plaintiff may file a dispositive motion in accordance with the discovery plan and
13 scheduling order.

14 The parties should be aware of the following:

15 1. That they may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to
16 this Report and Recommendation within fourteen days of being served with a copy of the Report
17 and Recommendation. These objections should be titled "Objections to Magistrate Judge's
18 Report and Recommendation" and should be accompanied by points and authorities for
19 consideration by the district judge.

1 2. That this Report and Recommendation is not an appealable order and that any notice of
2 appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed
3 until entry of judgment by the district court.

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5 Dated: September 20, 2024

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Craig S. Denney
United States Magistrate Judge